

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ROBYN HAYNES, <i>et al.</i>)	
Plaintiffs,)	
)	
v.)	1:12-cv-1090
)	
THE CITY OF DURHAM, <i>et al.</i>)	
Defendants)	

PLAINTIFFS' MOTION TO EXTEND TIME TO SERVE
THE SUMMONS AND COMPLAINT ON THE CITY OF DURHAM

Plaintiffs, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, respectfully move for an order extending the time for service of the summons and complaint on the City of Durham. Plaintiffs believe that they have served the City of Durham with the summons and complaint. However, today, the City of Durham filed a motion to dismiss the action on the grounds that Plaintiffs' service on the City was "insufficient." (ECF No. 5.)

Plaintiffs believe that the City has been served because, in January, Plaintiffs received confirmation from federal express that the package

properly addressed to the City Manager containing the complaint and summons directed to the City was accepted and signed for by the City Manager's administrative assistant on his behalf. Further, in affidavits filed with the Court today, the City Manager, Thomas Bonfield, and his administrative assistant, Raquel Rosario, admit those facts. (*See* Bonfield Aff. (ECF No. 5-1); Rosario Aff (ECF No. 5-2).) And that is not all. The City Manager also admits that he personally received the federal express package Plaintiffs' counsel addressed to him containing the complaint, the summons directed to the City, and Plaintiffs' request to waive service. (Bonfield Aff. ¶ 24 (ECF No. 5-1).)

Moreover, because the City Manager's agent, Ms. Rosario, accepted and signed for the package addressed to the City Manager, federal express did not return the package as "undeliverable," which would have alerted Plaintiffs to a continuing need to serve the City Manager. Instead, federal express reported to Plaintiffs' counsel that delivery of the package containing service of process on the City was accepted by the City Manager, through his agent, Ms. Rosario, who signed for the package as was required before federal express was authorized to release the package.

By contrast, Plaintiffs' attempts to serve the individual defendants via federal express were returned to Plaintiffs' counsel as undeliverable because a signature showing proof of delivery could not be obtained. (*See* Plaintiffs' motion to extend time to serve the individual defendants with the summons and complaint (ECF No. 4).) When federal express returned those packages to Plaintiffs' counsel, Plaintiffs' counsel was naturally alerted to the need for additional time to complete service on the individual defendants. Thus, on February 4, 2013, after attempts to serve the individual defendants personally or obtain their written waiver of service were unsuccessful, Plaintiffs counsel requested a 90-day extension of the time for serving the individual defendants. (*Id.*)

Plaintiffs continue to believe that the City has been properly served and that service on the City was not "insufficient" as the City now contends. Support for that belief was bolstered by the City's own affidavits admitting that the City Manager personally received the package Plaintiffs' addressed to him containing the complaint and summons directed to the City. However, to remove all doubt on the question, Plaintiffs intend to serve the City in other ways authorized by the governing statutes and rules.

Under these circumstances, there is good cause to extend the time for serving the City with the summons and complaint. Plaintiffs therefore respectfully request that the time for serving the summons and complaint on the City be extended for an additional 90-days.

A proposed order accompanies this motion and will be sent electronically to the Court in an editable format.

Respectfully submitted on this, the 5th day of February, 2013, by:

/s/ Robert C. Ekstrand

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CERTIFICATE OF SERVICE

The foregoing motion to extend time to serve the summons and complaint was filed with the Court's CM/ECF System on the date electronically stamped below which will issue a Notice of Electronic Filing to counsel of record for the City of Durham, who is registered with the Court's CM/ECF System. The individual defendants will be served with this document when they are located and served with the summons and complaint.

Respectfully submitted,

/s/ Robert C. Ekstrand

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